



TNRCC TECHNICAL GUIDANCE

PETROLEUM STORAGE TANK DIVISION

SUBJECT: **Buying or Selling a Leaking Storage Tank Site** **Some Items to Consider**

When purchasing or selling property that is known to contain product storage tanks or is a known Leaking Product Storage Tank (LPST) site, everyone involved should be aware of the requirements and potential problems associated with these conditions. A thorough knowledge of applicable TNRCC rules, TNRCC policies, and environmental law should ease the transition of the property and responsibilities.

OWNER DISCLOSURE

The owner (seller) of underground storage tanks is required to provide written notification to the purchaser of the tanks regarding the purchaser's responsibilities for tank registration and construction notification. This notification requirement, specified in Title 30, Texas Administrative Code (TAC), §334.9, applies to the transfer or conveyance of a tank from one person to another and to the sale of real property where underground storage tanks are located. Purchasers should be familiar with the rules regarding tank owner's responsibilities for registration, construction notification, and the many additional requirements which can be found throughout Title 30 TAC Chapter 334.

TANK REGISTRATION

The owner of an underground or aboveground storage tank is required to maintain up-to-date tank status and ownership registration information. Within thirty days of the change in tank status or ownership, the owner must submit an amended tank registration form. In other words, when a property with tanks is sold, it is the purchaser's responsibility to submit the updated registration form. For further information regarding tank registration, please review the TNRCC

p a m p h l e t
entitled *Am I Regulated?* or call the PST Registration Section at 512/239-2160.

CONSTRUCTION NOTIFICATION

At least thirty days prior to conducting any major construction activities on the underground storage tanks, the owner must submit written notification to the TNRCC on the Construction Notification Form (copy attached). Major construction activities include tank removals from service, repairs to the tanks, piping, or other parts of the tank system, and most other construction associated with the tank systems. For additional information on construction notifications, refer to 30 TAC §334.6. Also available is the TNRCC pamphlet entitled *How to Remove Your Underground Storage Tank From the Ground*.

RESPONSIBILITY FOR CORRECTIVE ACTION

The TNRCC in no way prevents the sale of any LPST and does not require that the LPST case be closed prior to the sale. Therefore it is imperative that all parties involved be aware of their obligations.

According to TNRCC rules, the storage tank owner or operator at the time of the release is responsible for corrective actions at leaking storage tank sites. Although a property transfer usually includes the transfer of the tank ownership, often the purchaser and seller will enter into an agreement in which one or the other retains or assumes responsibility for conducting corrective actions at the site. The mechanism and details of such an agreement must be worked out between the two parties. However, the TNRCC will

not be bound by any agreement between the parties. As far as the agency is concerned, a party may not “contract away” environment liability once a release has been discovered. Although a buyer of an LPST site may agree in writing to undertake any required corrective actions, the TNRCC reserves the authority to require the seller to conduct the corrective action should the buyer become insolvent or refuse to act for any reason. A change in property or tank ownership does not absolve a former owner of liability associated with the release. Should an agreement be reached between the buyer and seller and the point of contact for corrective action has changed, please submit the attached form to notify the TNRCC of the change.

The purchaser and seller should be fully aware of their responsibilities prior to the property transfer either by becoming familiar with the rules or by contacting a knowledgeable environmental consultant and/or environmental attorney.

AFFECTED PROPERTIES

Often adjacent property owners are concerned that if contamination is found to have migrated onto their property, that the TNRCC will require them to take responsibility for the remediation of the contamination. Please be assured that the rules and procedures of the TNRCC regarding the assessment and cleanup of releases from leaking storage tank sites apply to the owner and operator of the tank system (or the owner of the land if the tank owner is not available), and do not apply to the owner of adjacent or nearby properties.

In other words, although a land owner may ultimately be held responsible for cleaning up contamination on his or her property pursuant to §26.121 of the Texas Water Code, it is the practice of the agency to require the persons responsible for causing the contamination to conduct the corrective action. The agency also requires that person to assess, and remediate if necessary, the off-site contamination as well as the on-site contamination.

LPST SITE CLOSURE

Once an LPST site has been addressed to a level appropriate for site closure, the owner should justify

closure of the site and propose site closure to the TNRCC. When information on final closure of the site (the Final Site Closure Report) has been submitted, the TNRCC will issue a closure letter for the case. While the letter will allow for the termination of assessment and remediation work at the site, it does not imply that the site is “clean”. On the other hand, the TNRCC has no intention of revisiting a site unless new information is provided which indicates that site contaminant conditions are significantly different than indicated at the time closure was granted. Closing an LPST case confirms that, based on the information submitted to the TNRCC, the remaining contamination does not pose a threat to human health or safety with the site’s present condition and use. Should a buyer plan a different use for the site, the buyer must be aware that some uses may not be appropriate based on the contaminant levels remaining at the site. For example, if the LPST case was closed based on an industrial use, a day-care center may not be an appropriate future use without conducting additional remediation.

Should the buyer plan construction on the site, there may be a possibility that contaminants may be encountered. For example, workers excavating contaminated soil to install a basement for a new building may come in contact with the contaminants. In all such situations, proper precautions should be taken. Contaminated soils must always be managed properly and if removed from the ground, must be managed as a waste even if the LPST case has been closed.

CASE FILE RECORDS

If you are unsure whether the site in question is a known LPST site, the information can be obtained from the list of LPST cases maintained by the TNRCC. All correspondence and other information on LPST cases is maintained in case files in both the TNRCC Central Office and in the appropriate TNRCC Regional Office. The TNRCC recommends that prospective buyers review the information contained in the case file prior to purchasing the site. A list of LPST sites may be obtained from the TNRCC Information Resources Division at 512/463-8381. Case files may be obtained by contacting the TNRCC Central Records Office at 512/239-2920. Please

identify the site by the LPST ID number.

SUMMARY

The TNRCC is dedicated to providing services to protect human health and safety and the environment and will provide guidance and assistance to the public whenever possible. However, the sale or purchase of an LPST site carries with it certain liabilities and

obligations. The TNRCC recommends that anyone selling or purchasing an LPST site contact a knowledgeable environmental consultant for advice on issues stemming from contaminants remaining on-site and an environmental attorney for advice with regard to liability issues related to the sale or purchase of the site.

For further information, please review the TNRCC pamphlet entitled *Real Estate Considerations for LPST Cleanups*. This pamphlet and others may be

Responsible Party
9-2200.

The TNRCC does not offer legal advice to buyers or sellers of contaminated real estate. If you have questions you should consult a qualified consultant or environmental attorney.

Should you have any questions regarding this document, contact the TNRCC coordinator assigned to your particular case or contact the Responsible Party Remediation Section of the PST Division at 512/239-2200.

Texas Natural Resource Conservation Commission

NOTICE OF CHANGE IN POINT OF CONTACT FOR CORRECTIVE ACTION For Leaking Product Storage Tank Sites

The following information is provided as notice that the point of contact for corrective action for the listed property has changed. Please submit this form to the RPR Section, PST Division, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Please complete all blanks. If an item is not applicable, indicate with NA. Please type or print clearly.

LPST ID Number: _____ Facility ID Number: _____

FORMER POINT OF CONTACT:

Company Name: _____

Mailing Address: _____

City, State, Zip: _____

Contact Person: _____

Phone number: _____ Fax Number: _____

Contact Person's Signature: _____ Date: _____

NEW POINT OF CONTACT:

Company Name: _____

Mailing Address: _____

City, State, Zip _____

Contact Person: _____

Phone number: _____ Fax Number: _____

Contact Person's Signature: _____ Date: _____

FACILITY INFORMATION:

Facility Name: _____

Facility's Physical Address: _____

Facility City: _____ County: _____

REASON FOR CHANGE IN POINT OF CONTACT:

Tanks purchased _____ Date of purchase: _____

Property purchased _____ Date of purchase: _____

Contract agreement _____ Date of contract: _____

Condemnation of property _____ Date of condemnation: _____

Other _____ Date effective: _____

Please be advised that completion of this form does not relieve either the former or the new point of contact from liability associated with this LPST site.

Texas Natural Resource Conservation Commission
UNDERGROUND & ABOVEGROUND STORAGE TANK
CONSTRUCTION NOTIFICATION FORM

1. ☐ Underground Storage Tank (UST) ☐ Aboveground Storage Tank (AST)
2. ☐ Stage I ☐ Stage II (Vapor Recovery) CARB order # _____
3. **TYPE OF CONSTRUCTION:** (Indicate all that apply)
- ☐ Installation ☐ Replacement ☐ Improvement
- ☐ Removal ☐ Abandonment ☐ Other (Specify) _____

4. FACILITY LOCATION INFORMATION:

Facility Name _____

Address/Location: (No P.O. Box) _____

County: _____ City: _____

Facility No.: _____

Telephone: _____

5. OWNER INFORMATION:

Owner: _____

Representative: _____

Address: _____

City/State/Zip: _____

Telephone: _____

6. CONSULTANT INFORMATION:

Company: _____

Representative: _____

Address: _____

City/State/Zip: _____

7. CONTRACTOR INFORMATION:

Company: _____

Representative: _____

Address: _____

City/State/Zip: _____

CRP#: _____ ILP#: _____

8. GENERAL DESCRIPTION OF PROPOSED UST/AST ACTIVITY:

9. SCHEDULE/DATES FOR PROPOSED CONSTRUCTION:

10. SUBMITTED BY (SIGNATURE)

Title & Company: _____

11. MAIL COMPLETED FORM TO:

Texas Natural Resource Conservation Commission
Petroleum Storage Tank Division
P.O. Box 13087
Austin, Texas 78711-3087

TNRCC STAFF USE ONLY

Date Rec'd: _____

Region: _____

Remarks: _____

Tracking No.: _____

Logged By: _____



TEXAS
NATURAL
RESOURCE
CONSERVATION
COMMISSION

Office of Waste Management
Petroleum Storage Tank Division
P.O. Box 13087
Austin, Texas 78711-3087

The TNRCC is an equal opportunity/affirmative action employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation or veteran status. In compliance with the Americans with Disabilities Act, this document may be requested in alternate formats by contacting the TNRCC at (512)239-0010, Fax 239-0055, or 1-800-RELAY-TX (TDD), or by writing P.O. Box 13087, Austin, TX 78711-3087.